

रजिस्टर्ड नं० पी०/एस० एम० 14.



राजपत्र, हिमाचल प्रदेश

(असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, सोमवार, 20 दिसम्बर, 1982/ 29 अग्रहायण, 1904

हिमाचल प्रदेश सरकार

निर्वाचन विभाग

अधिसूचनाएं

शिमला-171002, 18 दिसम्बर, 1982

संख्या 3-11/73-इलेक.—भारत निर्वाचन आयोग के आदेश संख्या 76/हि० प्र० वि० सं०/82(1), दिनांक 8 नवम्बर, 1982, सवादी 17 कार्तिक, 1904 (शक), जो कि लोक प्रतिनिधित्व अधिनियम, 1951 की धारा 10(क) के अधीन जारी किये गये हैं, उसके अंग्रेजी रूपान्तर सहित जन-साधारण की सूचनार्थ प्रकाशित किये जाते हैं।

आदेश से,
एम० एस० मुखर्जी,
मुख्य निर्वाचन अधिकारी,
हिमाचल प्रदेश।

भारत निर्वाचन आयोग

अशोक मार्ग, नई दिल्ली-110001

8 नवम्बर, 1982

तारीख—

17 कार्तिक, 1904 (शक)

आदेश

निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिर्दिष्ट हिमाचल प्रदेश विधान सभा के निर्वाचन के लिए जो स्तम्भ (3) में विनिर्दिष्ट निर्वाचन क्षेत्र से हुआ है, स्तम्भ (4) में उसके सामन विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तदधिन बनाए गए नियमों द्वारा उक्त सारणी के स्तम्भ (5) में यथा उपदिष्ट रूप में अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहा है ;

और उक्त अभ्यर्थियों ने सम्यक सूचना दिए जाने पर भी उक्त अफसलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है तथा निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त अफसलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है ;

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निहित घोषित करता है ।

सारणी

क्रम सं०	निर्वाचन की विशिष्टियां	विधान सभा निर्वाचन क्षेत्र की क्रम संख्या और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम व पता	निरहता का कारण
1	2	3	4	5
1.	हिमाचल प्रदेश विधान सभा के लिए साधारण निर्वाचन, 1982.	19-नाहन	श्री प्रयाग दत्त, शमशेर बिला होस्टल, नाहन, जिला सिरमौर (हिमाचल प्रदेश) ।	निर्वाचन व्ययों का कोई भी लेखा दाखिल नहीं किया है ।
2.	-वही-	-वही-	मुहमद गुलजार, मार्फत मेसर्स नोशाद जनरल स्टोर, बाजार बड़ा चौक, नाहन, जिला सिरमौर (हिमाचल प्रदेश) ।	-वही-

आदेश से,
ओ० ना० नागर,
अवर सचिव

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashok Road, New Delhi-110001.

8th November, 1982

Dated—
17th Kartika, 1904 (Saka)

ORDER

Whereas the Election Commission is satisfied that each of the contesting candidates specified in column (4) of the Table below at the election to the Himachal Pradesh Legislative Assembly as specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge any account of his election expenses as shown in column (5) of the said Table as required by Representation of the People Act, 1951 and the Rules made thereunder;

And, whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice and the Election Commission is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10-A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as, and for being a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

TABLE

Sl. No.	Particulars of election	Sl. No. and name of assembly constituency	Name and address of the contesting candidates	Reason for disqualification
1	2	3	4	5
1.	General Election to Himachal Pradesh Legislative Assembly, 1982.	19—Nahan	Shri Paryag Dutt, Shamsher Villa Hostle, Nahan, District Sirmur, (Himachal Pradesh).	Failure to lodge any account of election expenses.
2.	-do-	-do-	Mohd. Gulzar c/o Messers Naushad General Store, Bazar Bara Chowk, Nahan, District Sirmur (Himachal Pradesh).	-do-

By order,
O. N. NAGAR,
Under Secretary.

शिमला-171002, 18 दिसम्बर, 1982

सं० (5/82)/82, दिनांक 10 दिसम्बर, 1982 संवादी भाद्रा 19,1904 (शक्), जन-साधारण की सूचनार्थ प्रकाशित की जाती है।

आदेश से,
एम० एस० मुखर्जी,
मुख्य निर्वाचन अधिकारी,
हिमाचल प्रदेश।

भारत निर्वाचन आयोग

निर्वाचन सदन, अशोक मार्ग, नई दिल्ली-110001.

10 दिसम्बर, 1982

तारीख—
19 अग्रहायण, 1904 (शक्)

अधिसूचना

सं० 82/हि० प्र०-वि० सं० (5/82)/82.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग 1982 की निर्वाचन अर्जी सं० 5 में हिमाचल प्रदेश, शिमला उच्च न्यायालय के तारीख 4 नवम्बर, 1982 का निर्णय एतद्द्वारा प्रकाशित करता है।

आदेश से,
(ओ० ना० नागर),
अवर सचिव,
भारत निर्वाचन आयोग।

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashok Road, New Delhi-110001.

Dated—
10th December, 1982
19th Agrahayana, 1904 (Saka)

NOTIFICATION

No. 82/HP-LA/(5/82)/82.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment dated the 4th November, 1982 of the High Court of Himachal Pradesh at Simla in Election Petition No. 5 of 1982.

ELECTION PETITION NO. 5 OF 1982

November 4th 1982.

Shri Avtar Singh and another
Shri Sada Ram Thakur

..Petitioners.
..Respondent.

T. R. HANDA, J.
Shri Chhabil Das, Advocate.
Saiyashri K. S. Patyal and S. S. Mittal, Advocates.

T. R. HANDA

The respondent Shri Sada Ram Thakur was declared duly elected to the Himachal Pradesh State Legislative Assembly from the Bilaspur Sadar Constituency (Constituency No. 21) in the State Assembly Elections held in May 1982. Petitioner No. 1 Shri Avtar Singh had filed his nomination paper to contest the election from this very constituency. His nomination was, however, rejected by the Returning Officer at the time of scrutiny. Petitioner No. 2 Shri Ashwani Kumar is an elector from the same constituency. Both these petitioners have joined hands in filing this petition under sections 80, 81 and 100 of the Representation of the People Act, 1951, hereinafter called 'the Act' to challenge the validity of the respondent's election.

The sole ground on which the petitioners seek to challenge the validity of the respondent's election is that the nomination of petitioner No. 1 had been improperly rejected by the Returning Officer.

The case for the petitioners is that petitioner No. 1 Shri Avtar Singh is a registered voter of 23-Gehrwin constituency of District Bilaspur and his name appears at S. No. 518 of Part 45 of the Electoral Roll of this constituency. He had filed his nomination to contest election from 21-Bilaspur Sadar Constituency. The nomination paper was filed before the expiry of the last date fixed for the purpose on 24-4-1982. The nomination paper was filed on the prescribed form, duly completed and signed by his proposer and seconder. The petitioner had also deposited the requisite security and subscribed to the prescribed Oath. He had also been issued receipt for his nomination paper. The scrutiny of nomination papers pertaining to all the constituencies of Bilaspur district including 23-Gehrwin Constituency and 21-Bilaspur Sadar Constituency was conducted by the same Returning Officer on the same day, that is, 26-4-1982 in his Court Room where Electoral Rolls of all these constituencies were present. The Returning Officer rejected the nomination paper of petitioner No. 1 on the short ground that the same did not comply with the provisions of section 33(5) of the Act. According to the petitioner the Returning Officer before rejecting his nomination paper was required to hold a summary enquiry and in case he had done so, a bare reference to the relevant entries of the Electoral Roll of 23-Gehrwin Constituency which was available there, would have satisfied him that petitioner No. 1 was registered as an elector in the 23-Gehrwin Constituency. The order of the Returning Officer rejecting the nomination of petitioner No. 1 without holding such summary enquiry is thus bad being in violation of section 36 of the Act which prescribes for such summary enquiry. In any case, according to the Petitioners, the Returning Officer should have reviewed his order rejecting the nomination of petitioner No. 1 after this petitioner had produced a certified copy of the relevant entries from the Electoral Roll of 23-Gehrwin Constituency and complied with the provisions of section 33(5) of the Act.

The petition was contested by the respondent whose main plea was that even on the averments made in the petition, the order of the Returning Officer rejecting the nomination paper of petitioner No. 1 was perfectly valid. Some preliminary objections were also raised by the respondent but the same were not pressed.

On the pleas of the parties the following issues were framed:—

1. Whether the order of the Returning Officer rejecting the nomination papers of petitioner No. 1 is illegal and invalid?
2. Relief.

Issue No. 1.

The facts of this case are short, simple and practically undisputed. These facts reveal that Shri Avtar Singh petitioner No. 1 had filed his nomination paper to contest election from

Bilaspur Sadar Constituency, a constituency different from the one of which this petitioner is an elector, namely, 23-Gehrwin Constituency. This petitioner had neither filed along with his nomination paper nor produced before the Returning Officer at the time of scrutiny any of the following three documents as required by section 33 (5) of the Act:—

1. a copy of the Electoral Roll of 23-Gehrwin Constituency.
2. a copy of the relevant Part of the Electoral Roll of 23-Gehrwin Constituency; and
3. a certified copy of the relevant entries of the Electoral Roll of 23-Gehrwin Constituency.

Neither petitioner No. 1 nor any of his authorised agents was present when the scrutiny of the nomination papers pertaining to Bilaspur Sadar Constituency was taken up by the Returning Officer though the time and place of such scrutiny had been announced in advance by the Returning Officer and had also been endorsed on the receipt of the nomination papers issued to the candidates. In this connection a reference may be made to the receipts issued by the Assistant Returning Officer to petitioner No. 1 and the respondent and which stand exhibited as Ex. P. 6 and Ex. R. 1 on the record. Since none of the documents mentioned in section 33 (5) was filed by petitioner No. 1 along with his nomination paper nor this petitioner cared to produce any such document at the time of scrutiny, the Returning Officer rejected the nomination of this petitioner *vide* his short order found at Ex. P. 3 on the back of the nomination paper Ex P. 2 and reading as under :—

“Candidate not present. Rejected.

Does not comply with sec. 33 (5).

Rep. of People Act.

26-4-82

Sd/-

Returning Officer

After the scrutiny of all the nomination papers pertaining to Bilaspur Sadar Constituency was over, petitioner No. 1 appeared before the Returning Officer and presented before him his application Ex. P. 4 praying for review of his order found at Ex. P. 3. Along with this application, petitioner No. 1 had filed a certified copy of the relevant entries of the Electoral Roll of 23-Gehrwin Constituency which is found at Ex. P. 5. The Returning Officer, however, rejected that application as in his view the same was not maintainable.

It is in the light of the above mentioned facts and circumstances that we are to determine whether the rejection of the nomination paper of the petitioner No. 1 was proper or invalid.

Shri Chhabil Das, the learned counsel for the petitioners raised several contentions in support of his challenge to the order of the Returning Officer rejecting the nomination paper of petitioner No. 1. His first contention was that section 36 of the Act mentions only of the date and not of the time of scrutiny and hence it was open for the petitioner to have produced the certified copy of the relevant entries of the Electoral Roll of 23-Gehrwin Constituency before the Returning Officer at any time during the working hours on the day of scrutiny, that is, 26-4-1982. The Returning Officer was, therefore, not justified in passing the impugned order rejecting the nomination of the petitioner without waiting for the petitioner till the last minute of the working hour of that day. This argument appears to be without substance and based on

a mis-conception of the provisions of section 36. A bare reading of the language of section 36 (1) of the Act would show that this provisions mentions not only of the date but also of the time and place of scrutiny. Whereas the date of scrutiny is to be notified by the Election Commission under section 30 of the Act, the time and place of scrutiny are to be appointed by the Returning Officer himself under this provision, namely section 36 (1). The Returning Officer in the instant case had appointed the time of scrutiny as 11 A. M. and the place, as his Court Room as is apparent from the receipts Ex. P. 6 and Ex. R. 1. The Returning Officer thus having appointed the time and place of scrutiny, all the candidates were required to appear before the Returning Officer at the appointed time and place and there was no duty enjoined on the Returning Office to wait for a particular candidate till the last minute of the working hour of the day of scrutiny. The Returning Office in passing the impugned order which was admittedly passed sometime between 11.30 A.M. and 12 noon cannot be said to have committed any irregularity much less illegality. This first contention of the learned counsel for the petitioners thus deserves to be repelled.

The Second contention raised by the learned counsel for the petitioner is that the provisions of section 33(5) of the Act are only technical and directory in character and not mandatory and a non-compliance of such provision would not by itself entail the penalty of rejection of the nomination of the defaulting candidate. The sole object of the requirement of this provision, according to the learned counsel, is to enable the Returning Officer to satisfy himself that the candidate at the election who claims to be an elector of a constituency different from the one from which he seeks the election, is actually registered as an elector in the Electoral Roll of such other constituency. In case the Returning Officer can be so satisfied in some other manner, it would be immaterial whether the requirement of section 33(5) of the Act has been complied with or not by a particular candidate. Quoting an example the learned counsel stated that the Returning Officer may have before him a copy of the Electoral Roll of the other constituency of which the candidate claims to be an elector and a perusal of the relevant entries of such Electoral Roll could amply satisfy the Returning Officer about the candidate being a registered elector of such other constituency. In a situation of this type it would be immaterial whether the candidate had filed a copy of the Electoral Roll of the constituency of which he claims to be an elector or not while filing his nomination for contesting election from some other constituency.

In my view this argument is no more available to the learned counsel as the point sought to be made by him now stands concluded by the authoritative and repeated pronouncements of the Supreme Court. The first of such pronouncements was made in 1959 in the case of *Shri Baru Ram V. Smt. Parsani and others* reported in A.I.R. 1959 Supreme Court 93. In that case one Jai Bhagwan had filed his nomination for contesting the election from Rajaund constituency in Karnal district. He was admittedly not an elector of that constituency but of a different constituency. At the time of filing his nomination paper he had not filed a copy of the Electoral Roll of the constituency in which he was registered as an elector nor the relevant part thereof nor a certified copy of the relevant entries from the said Roll. Even at the time of scrutiny he did not care to produce any of these documents. He was present at the time of scrutiny and at his request was allowed two hours time by the Returning Officer to produce the relevant documents. Shri Jai Bhagwan, however, failed to produce any of the relevant documents within the time allowed. In consequence the Returning Officer rejected his nomination paper under section 36(2) of the Act. In these circumstances it was contended before the Supreme Court that the rejection of the nomination paper of Jai Bhagwan was not proper. After referring to the provisions of section 33 to 36 of the Act the Supreme Court speaking through Justice P. B. Gajendregadhkar (as his Lordships then was) observed as under:—

“There is no doubt that in the present case there was failure on the part of Jai Bhagwan to comply with S. 33(5) and *prima facie* S. 36(2)(b) seems

to justify the rejection of his nomination paper on that ground. Section 33(5) requires the candidate to supply the prescribed copy and Section 36(2)(b) provides that on his failure to comply with the said requirement his nomination paper is liable to be rejected. In other words, this is a case where the statute requires the candidate to produce the prescribed evidence and provides a penalty for his failure to do so. In such a case it is difficult to appreciate the relevance or validity of the argument that the requirement of S. 33(5) is not mandatory but is directory, because the statute itself has made it clear that failure to comply with the said requirement leads to the rejection of the nomination paper. Whenever the statute requires a particular act to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence it would be difficult to accept the argument that the failure to comply with the said requirement should lead to any other consequences."

A similar pronouncement on the subject was made in the case of *Norbada Prasad V. Chhaganlal and others* reported in A.I.R. 1969 Supreme Court 395. In the case of Norbada Prasad the election of the successful candidate was challenged by an elector and one of the grounds taken in support of the election petition was that the Returning Officer had improperly rejected the nomination paper of one Ram Kishan. As here, in that case also, it was an admitted position that Ram Kishan whose nomination paper had been rejected was an elector of a different constituency than the one from which he had sought to contest the election. Ram Kishan was registered as a voter in the Electoral Roll relating to Harda Constituency whereas he had filed his nomination to contest the election from Khategaon constituency. Along with his nomination paper Ram Kishan had produced a certificate from the Tehsildar of Harda which was in the following terms:—

"I certify that there is an entry of the name of Ram Kishan, son of Laxmi Chand, Village Dholgaon, at Anukaran No. Harda 217, Electoral Roll of 1966, Part of Anukaran No. 177, District Hoshangabad, Tehsil Harda, under the heading Ra-Ni-Ma Serali, Serial No. 196, House No. 91/2, with particulars Ram Kishan Laxmi Chand, male, 16-1-1967 aged 45 years.

Sd/-
16-1-67
Tehsildar, Harda."

Apart from this certificate Shri Ram Kishan had produced no other document while filing his nomination paper. Nor did he care to produce any of the documents mentioned in section 33 (5) of the Act at the time of the scrutiny. On these facts the Supreme Court held the rejection of the nomination of Ram Kishan as proper. The reasonings advanced were as under:—

"He did not produce the kind of evidence which section 33 (5) of the Representation of the People Act, 1951, requires to be produced when a candidate is registered as a voter in some other constituency. Section 33(5) of the Representation of the People Act requires that where the candidate is an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed along with the nomination paper, be produced before the Returning Officer at the time of scrutiny. The nomination paper of Ram Kishan was filed on February 20, 1967. The date of scrutiny was 21st of the same month. Ram Kishan had two alternatives before him. One was to produce any of the documents mentioned before the Returning Officer or to have filed it earlier with his nomination paper. He did neither. He produced a certificate from an officer who it is not provided to our satisfaction had the authority to issue a certified copy of the Electoral Roll. He also ad'ed an affidavit on his own part in which the gist of the entry was given. Indeed the certificate of the Tehsildar

was based on the affidavit which was annexed to the certificate. There was no compliance with the provisions of S. 33(5) of the Representation of the People Act and there was no power in the court to dispense with this requirement. It is a well understood rule of law that if a thing is to be done in a particular manner it must be done in that manner or not at all. Other modes of compliance are excluded."

The above view as later reiterated by the Supreme Court in the cases of *Parmar Himat-singh Jugatsingh V. Patel Harmanbhai Narsibhai* reported in A.I.R. 1974 Supreme Court 951 and *Avadh Raj Singh V. Jugal Kishore Gupta* reported in A.I.R. 1979 Supreme Court 1148. This second contention of Shri Chhabil Das must also therefore fail.

The next contention of the learned counsel for the petitioner was that the non-compliance of the provisions of section 33 (5) of the Act was not a defect of a substantial character within the meaning of sub-section (4) of section 36 of the Act and hence this defect could not justify the rejection of the nomination paper. This point was also raised before the Supreme Court in the case of Shri Baru Ram (supra) where their Lordships ruled as under:—

"It is, however, urged that the statute itself makes a distinction between defects which are of a substantial character and those which are not of a substantial character. This argument is based upon the provisions of S.36 (4) of the Act which provides that the returning officer shall not reject any nomination paper on the ground of any defect "which is not of a substantial character". The failure to produce the requisite copy, it is urged, may amount to a defect but it is not a defect of a substantial character. There is no doubt that the essential object of the scrutiny of nomination papers is that the returning officer should be satisfied that the candidate who is not an elector in the constituency in question is in fact an elector of a different constituency. The satisfaction of the returning officer is thus the matter of substance in these proceedings; and if the statute provides the mode in which the returning officer has to be satisfied by the candidate it is that mode which the candidate must adopt. In the present case Jai Bhagwan failed to produce any of the copies prescribed and the returning officer was naturally not satisfied that Jai Bhagwan was an elector of a different constituency. If that in substance was the result of Jai Bhagwan's failure to produce the relevant copy the consequence prescribed by S. 36 (2) (b) must inevitably follow. It is only if the returning officer had been satisfied that Jai Bhagwan was an elector of a different constituency that his nomination papers could have been accepted as valid. It is well settled that the statutory requirements of election law have to be strictly observed. As observed by Mahajan C. J. who delivered the judgment of this Court in *Jagan Nath vs. Jaswant Singh*, 1954 SCR 892 at PP 895, 896: (A.I.R. 1954 SC 210 at PP. 212-213).

".....An election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the court possesses no common law power".

The learned Chief Justice has also added that ".....it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law".

In this connection we may usefully refer to an other decision of this Court in *Rattan Anmol Singh vs. Atma Ram*. 1955-SCR 481 at P. 488: (AIR 1954 SC 510 at P.513). While dealing with the question as to whether the requirements as to attestation were of technical or of an unsubstantial character. Bose J. observed that—

"When the law enjoins the observance of a particular formality, it cannot be disregarded and the substance of the thing must be there".

We must, therefore, hold that the High Court was right in coming to the conclusion that the nomination paper of Jai Bhagwan had been validly rejected by the returning officer."

The next contention of the learned counsel was that before rejecting the nomination paper the returning officer was in terms of sub-section (2) of section 36 of the Act required to hold an enquiry though of a summary nature and in case he had cared to hold such enquiry, he could have easily satisfied himself that petitioner No.1 was a registered elector of 23-Gehrwin constituency since admittedly the Electoral Roll of this constituency was available before the Returning Officer at the time of scrutiny. This argument also appears to be without substance and merit. In the first place no provision of the Act enjoins any duty on the Returning Officer to satisfy himself about a particular candidate being an elector of a different constituency by summoning some evidence at his own level. On the other hand the law casts a duty on the candidate himself to produce any one of the three documents mentioned in section 33 (5) of the Act in support of his claim of being an elector of a different constituency and it is only on a perusal of such documents that the returning officer is required to satisfy himself about the candidate being an elector of that constituency. In case the candidate fails to comply with the mandatory provisions of section 33(5) of the Act the Returning Officer cannot come to his rescue by arranging a copy of the relevant Electoral Roll. Section 36(2) specifically provides that failure to comply with any of the provisions of section 33 would entail the penalty of rejection of the nomination. Again, as repeatedly held by the Supreme Court, it is a well settled rule of law that where a thing is required to be done in a particular manner it must be done in that manner only or not at all. Other modes of compliance are excluded. This argument of the learned counsel is, therefore, also repelled.

The last contention raised by the learned counsel was that after petitioner No. 1 had produced a certified copy of the entries of the relevant Electoral Roll and complied with the provisions of section 33 (5) of the Act, the Returning Officer ought to have reviewed his earlier order rejecting the nomination of this petitioner. It cannot be disputed that the earlier order passed by the Returning Officer rejecting the nomination of petitioner No. 1 was a quasi-judicial nature. It is well established that in judicial and quasi-judicial matters the power to review is not an inherent power. No Court, Tribunal or Authority exercising quasi-judicial jurisdiction can review its order passed in that capacity unless the power to review has been conferred by law either specifically or by necessary implication. No provision in the Act was brought to my notice from which it could be gathered that the Returning Officer had the power to review its own order passed under section 36 of the Act rejecting the nomination paper. Again, I fail to appreciate how petitioner No. 1 by producing a certified copy of the relevant entries from the Electoral Roll of 23-Gehrwin Constituency along with his application Ex. P. 4 can be said to have complied with the mandatory provisions of section 33 (5) of the Act. What this sub-section enjoins is that any one of the three documents mentioned therein shall be filed by the candidate along with his nomination paper failing which the same shall be produced by the candidate at the time of scrutiny. Such documents could thus be furnished by petitioner No. 1 latest at the time of scrutiny. Furnishing of the certified copy of the relevant entries from the Electoral Roll of 23-Gehrwin Constituency after the scrutiny was over cannot, therefore, be taken as compliance of the provisions of section 33(5) of the Act. The Returning Officer was in the circumstances perfectly justified in refusing to entertain the prayer of petitioner No. 1 made in his application Ex. P. 4 for review of his order rejecting the nomination of this petitioner. This last contention must, therefore, also be repelled.

As a result of my above discussion I would hold that the rejection of the nomination paper of petitioner No. 1 by the Returning Officer is legal and valid. This issued is found against the petitioner.

In view of my findings on issue No. 1 I uphold the election of Shri Sada Ram Thakur respondent and dismiss this election petition. I further order that the costs of this election

petition which are assessed at Rs. 750/- shall be paid to the respondent by the petitioners who shall be jointly and severally liable for the payment thereof.

Intimation with regard to substance of the decision of this election petition be sent to the Election Commission and the Speaker of the Himachal Pradesh State Legislative Assembly. A copy of this decision duly authenticated be also sent to the Election Commission.

November 4th 1982.

Sd/-
T. R. HANDA,
Judge.

By order,
O. N. NAGAR,
Under Secretary,
Election Commission of India.

